

United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

U. S. Oil & Land Company, a corporation,

Appellant,

vs.

Teresa Bell, as Administratrix of
the Estate of Thomas Bell, deceased,
with the will annexed,
et al.,

Appellees.

Brief of Union Oil Company of California, One of
Appellees.

Filed

OCT 6 - 1914

LEWIS W. ANDREWS, F. D. Monckton

THOS. O. TOLAND,

Clerk

ANDREWS, TOLAND & ANDREWS,

Solicitors for Appellee, Union Oil Company of California.

United States

Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

U. S. Oil & Land Company, a corporation,

Appellant,

vs.

Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, with the will annexed, et al.,

Appellees.

Brief of Union Oil Company of California, One of Appellees.

STATEMENT OF CASE.

U. S. Oil & Land Company filed its bill in equity against Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, and a large number of other persons and corporations. It invokes the jurisdiction of the federal court solely because of the diverse citizenship of the parties. Said bill in equity is in the nature of a suit to quiet title and compel Teresa Bell as administratrix to convey to appellant the undivided one-half of the ten thousand (10,000) acre tract.

The defendants filed various answers, setting up the entire record in certain cases begun and prosecuted to final decree and judgment by John S. Bell v. George Staacke, Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, and others, and showing that all matters and things involved in this controversy had been fully adjudicated in the courts of California and established in the Supreme Court thereof adversely to the claims of appellant, and that these adjudications remain in full force and are a bar to any right of action on the part of appellant.

The question thus raised by the answers was squarely one of *res adjudicata*, and the court determined to hear that issue before proceeding further with the case.

It was thereupon stipulated in open court that the allegations concerning the several actions, judgments and decrees set forth and pleaded in the answers so filed, substantially stated the true facts and situation with regard to said judgments, and should be and were treated as the evidence of said judgments and decrees and orders of court, but without any admission on the part of appellant of the jurisdiction of the several courts or the validity of the judgments and decrees.

Thereupon the District Court heard the case upon the question of *res adjudicata* and the effect of these judgments and decrees upon the right of appellant under its bill in equity, and found and decided that said judgments and decrees were final and binding and that the bill in equity should be dismissed, which was done.

STATEMENT OF FACTS.

John S. Bell was the nephew of Thomas Bell, and at one time owned 10,000 acres of land in Santa Barbara county, which he had received from Thomas Bell. Thomas also owned 4,000 acres. Under a written contract between them, Thomas Bell was advancing and loaning money from time to time to John S. Bell, and all of this property was finally sold to a third party by John S. Bell and Thomas Bell, and certain notes and a mortgage taken to Thomas Bell for the deferred purchase money,—the cash payment being applied on the indebtedness from John S. to Thomas.

Thomas continued under written contract to hold the notes and mortgage to secure money advanced, or which he might thereafter advance, to John S. The whole purchase price was about \$350,000, and 4,000 acres of the land belonged to Thomas, at all times, and as to that part, John S. was not interested.

Later the purchaser failed to pay interest and Thomas began foreclosure. The purchaser thereupon proposed to convey back the land and have his notes and mortgage cancelled. By agreement between John S. and Thomas, this was done, but the conveyance was made to George Staacke, a confidential clerk of Thomas Bell, and it was agreed that the title should be held in trust by Staacke to secure moneys owing or which should be thereafter advanced by Thomas to John S.

Thomas died and John S. shortly thereafter began an action against George Staacke to have a trust declared in this land in favor of John S. and to compel Staacke to convey the land to him. The estate of Thomas Bell was made a party.

This was case No. 2826, in the Superior Court of Santa Barbara county. The case was tried and the court found that Staacke was trustee of the land for John S. Bell, and that John S. Bell owed the estate of Thomas Bell something over \$52,000 as a balance due up to October 16th, 1892, the date of the death of Thomas. The court, however, found that Staacke did not hold the title to the 10,000 acres in trust as security for this indebtedness.

The findings and conclusions were filed March 6th, 1901, and notice of intention to move for a new trial was duly given in March, 1901. About June 7th, 1901, the court of his own motion filed two additional findings in favor of Teresa Bell, administratrix, which additional findings had nothing whatever to do with the decree in favor of the plaintiff, and neither party made any objection to or appeal from such additional findings.

The estate of Thomas Bell appealed to the Supreme Court from the judgment and decree, and also from the refusal to grant a new trial. The appeal from the judgment and decree was taken one day before the entry of judgment, and was therefore dismissed on motion. The appeal from the overruling of the motion for new trial resulted in the reversal of the court below and the granting of a new trial. This is reported in 137 Cal. 307. A rehearing was granted in the Supreme Court on the question of the new trial, and the court in bank again held that the motion for new trial should be granted, and remanded the case for new trial. The facts are again fully discussed in the opinion, 141 Cal. 186.

In that case, John S. Bell expressly made the point that the notice of intention to move for new trial was premature and that any action of the court upon such motion was therefore without jurisdiction and void. The Supreme Court on full hearing refused to allow this claim, but on the contrary granted a new trial, and thereby vacated the judgment theretofore rendered.

On the new trial the issues were found in favor of the estate of Thomas Bell, and the property was ordered sold to satisfy the \$52,000 debt and interest. This case was again appealed to the Supreme Court by John S. Bell, and the judgment and decree of the Superior Court was fully affirmed.

While this case was pending, Kate M. Bell and James L. Crittenden, grantees of John S. Bell, began another action in the Superior Court of the city and county of San Francisco, asking to have their title quieted against the claims of San Francisco Savings Union, under a trust deed made by George Staacke to certain trustees, to secure a \$60,000 indebtedness. A decree was rendered on cross-petition in favor of the trustees for the San Francisco Savings Union.

The decree directed the Mercantile Trust Company, which had become the trustee for the Savings Union, to sell the property and first pay the debt of \$60,000 and interest out of the proceeds.

It was expressly found in that decree that in the case of Bell v. Staacke, which was then pending, all questions of the relations between John S. Bell and his grantees, on one hand, with Staacke and the estate of Thomas Bell on the other, "are in course of judicial determination and settlement therein." The judgment

in the Savings Union case, therefore, made no adjudication of the rights of John S. Bell and Thomas Bell (or their successors) as between each other, "leaving the question of those rights to be determined by Bell v. Staacke."

The full discussion of this matter is found in 153 Cal. 64, 74.

The Supreme Court having affirmed the final judgment and decree in John S. Bell v. Staacke *et al.*, case No. 2826, the commissioner duly sold the 10,000 acres, and Teresa Bell became the purchaser thereof and the one year for redemption having expired, she duly received her deed from the commissioner.

After receiving her deed from the commissioner, Teresa Bell paid to the trustee for the San Francisco Savings Union the amount due it under the judgment already referred to. She was a party entitled to redeem, and such payment would surely give her the right to a release and reconveyance from the trustee.

Under the foregoing facts which appear in the pleadings in this case, the District Court had no difficulty in finding that the appellant is concluded by the judgments, orders and sale in the courts of California, and that it has no right or interest in the property, and that its bill in equity should be dismissed.

Conclusiveness of Judgment of State Courts Upon Local Laws and Procedure.

"It may be said generally that whenever the decisions of the state courts relate to some law of a local character which may have become established by those courts or has always been a part

of the law of the state, that the decisions upon the subject are usually conclusive and always entitled to the highest respect of the federal courts."

4 Enc. of United States Supreme Courts Reports, 1058, citing

Detroit v. Osborne, 135 U. S. 482;

Bucher v. Chesire R. Co., 125 U. S. 555, and other cases.

"The decision of the highest court of the state that a cause of action arose, 'within the state,' within the meaning of the statute, providing that an action against a foreign corporation might be maintained by another foreign corporation or by a non-resident, where the cause of action arose within the state, is binding upon the federal court."

Anglo-American Prov. Co. v. Davis Prov. Co., 191 U. S. 373.

See also

Northern C. R. Co. v. Maryland, 187 U. S. 258-267.

In construing the statutes of a state, and determining their affect and validity, the federal courts will follow the decisions of the highest tribunal of the state upon the same subject. See authorities above cited, and also

Stoll v. Pacific Coast S. S. Co., 205 Fed. 169.

Res Adjudicata.

Certain judgments of Superior Courts of the state of California and of the Supreme Court of the state of California, upon the precise claims and controversy here presented, in litigations directly between the same

parties, or those in privity with them, were pleaded at bar, and this case in the court below was heard upon the answers thus pleading these judgments and upon stipulation made in open court that the facts relating to the judgments as set forth in the several answers were substantially correct,—but not admitting the jurisdiction of the several courts or the validity of the judgments.

The court below found and decided that the judgments in question fully disposed of all matters involved in this case and that they are binding upon the parties and upon the federal court.

It will be observed *that this case presents no federal question* and was brought in the federal court solely under favor of the law giving the federal court concurrent jurisdiction with the state court in cases of diverse citizenship.

The Supreme Court of California having four times held against the contentions of the appellants or those under whom they claim, and the District Court having followed the Supreme Court of California, and having recognized the finality of its judgments,—the appellants now ask this court to review and reverse the judgments of the Supreme Court of California and especially direct their claim to a proposition of the construction and effect of local statutes of California, and rules of procedure governing motions for new trial and appeal under those statutes.

It is elementary law, recognized by all authorities, that a judgment in a state court which has been affirmed in the Supreme Court of a state, cannot be re-

viewed for error or irregularity in the District Court of the United States.

Such a judgment is necessarily *res adjudicata* upon the parties and their privies, and they have exhausted their remedy when they have presented to the Supreme Court of the state their claims with regard to any irregularity or lack of jurisdiction on the part of the trial court.

In Forsyth v. Hammond, 166 U. S. 506, in a proceeding by the city of Hammond to bring within its corporate limits the lands of Forsyth, a decree of the Circuit Court was rendered annexing such lands to the city. Forsyth insisted that such decree was not only erroneous but void, and voluntarily commenced an action in the State Supreme Court (in error) to have such claim established. It was held that the decision of the State Supreme Court was conclusive as to the matters decided. In a subsequent proceeding in the federal court between the same parties, in passing upon this question, the court said:

“If action by the state tribunals stopped with the decree of the trial court, it might be said that the plaintiff did not voluntarily seek that forum. She was brought in by appropriate process and compelled to there litigate the question. But after an adverse decree, she insisted that it was not only erroneous but void and voluntarily commenced an action in the Supreme Court of the state, to have that claim established. She invoked the jurisdiction of that court. She summoned the city of Hammond into that forum, and there challenged the decree of the Circuit Court; challenged it for error and also for lack of jurisdiction. The ques-

tions both of error and of jurisdiction were certainly judicial in their nature and questions within the undoubted cognizance of the Supreme Court. She voluntarily sought its judgment. Can she after its decision be heard in any other tribunal to collaterally deny the validity thereof? Does not the principal of *res judicata* apply in all its force? Having litigated the question in one competent tribunal and having been defeated can she litigate the same question in another tribunal, acting independently and having no appellate jurisdiction?"

That case is in principal precisely the same as the case at bar.

John S. Bell and those claiming under him fully litigated out all his claims upon the merits of the controversy in the Superior Court of Santa Barbara county, California, and in the Supreme Court of that state. They presented to the Supreme Court of California the precise question of jurisdiction and the precise claim that the second judgment and decree of the Superior Court of Santa Barbara county was void,—which is at the foundation of this suit in the federal court.

They invoked the jurisdiction of the Supreme Court of California upon that question, and had their day in court in the highest tribunal provided by the Constitution and laws of this state. Having been defeated in the claim that the action of the Supreme Court and of the Superior Court of Santa Barbara county,—in granting a new trial and in the final judgment resulting therefrom,—were void and without jurisdiction, they now seek to relitigate the same question in the

District Court of the United States. We submit that this cannot be done and that not only will the federal court follow the construction which the Supreme Court of California has given to the rules of procedure and code provisions governing new trials and appeal in California, but further than this, that the judgments so rendered and affirmed in the state courts are beyond the power of the Federal District Court to review and are *res adjudicata* upon the parties.

In Scotland County v. Hill, 132 U. S. 107, 114, the court said:

“If there has been an adjudication in a state court which is binding upon plaintiff, that adjudication, whether right or wrong, concludes him until it has been reversed or otherwise set aside in some direct proceeding for that purpose. It cannot be disregarded any more in courts of the United States than it can in the state courts.”

See also

Central Trust Co. v. Seasingood, 130 U. S. 482,
492;

Mitchell v. First National Bank, 180 U. S. 471.

In Nichols v. Levy, 5th Wall. 433, the state court had given construction and interpretation to a statute of its own state, and the case was taken to the Supreme Court of the United States. That court held that it was bound by the construction of the statute given by the Supreme Court of the state, although if the question had been open and treated on general principles of jurisprudence, and independently of the state decision on its own statute, the judgment would necessarily have been the other way.

Answer to Points and Authorities In Brief for Appellant.

ANSWER TO POINT 1:

This precise question was decided against appellants and became *res adjudicata* in Bell v. Staacke, 141 Cal. 186. At page 189 the court says:

“There is nothing in this point. The findings and conclusion of law were filed March 6th, 1901, in due time, and on March 19th, 1901, defendants gave their notice of intention to move for a new trial. Some two months afterwards, the judge of the lower court on his own motion, reciting that such findings had been inadvertently omitted, made and filed two additional findings upon two issues raised by plaintiff’s answer to defendant’s cross-complaint. * * * They were in no way connected with the findings upon which the decree in favor of plaintiff was founded, and neither party attacks them, nor has either party appealed from or questioned this part of the decree.”

The whole case is then discussed on its merits and the order denying the motion for new trial was reversed and the cause remanded.

Upon retrial final judgment was rendered in favor of the estate of Thomas Bell and was again appealed by John S. Bell to the Supreme Court of California, and the judgment in favor of the estate of Thomas Bell was affirmed in 151 Cal. 544.

In that case, at page 547 the court says:

“A claim that the Superior Court had no jurisdiction to retry this case, notwithstanding that it was remanded by this court for a new trial, is

based on the fact that the appeal from the former judgment in favor of the plaintiff was dismissed. This, it is said, constituted an affirmance of the judgment preventing the subsequent giving of any other judgment. But a judgment, even although expressly affirmed on appeal, is vacated by an order granting a new trial. See *Swett v. Grey*, 141 Cal. 83, 88."

That judgment so affirmed by the Supreme Court remains in full force, and is a complete bar to this action.

When the case was first before the Supreme Court in *Bell v. Staacke*, 137 Cal. 305, the court in its opinion on page 308, said:

"The premature service of a notice of intention to move for a new trial, or a *failure* to serve such notice at all, might be a good reason for *denying the motion*, but does not deprive this court of jurisdiction to hear the appeal, nor does it constitute a reason for its dismissal upon the ground that the court *has not jurisdiction to hear it*. Matters occurring prior to the order appealed from, cannot be considered on the motion to dismiss the appeal. (*Heinlen v. Heilbron*, 94 Cal. 636; *Knowlton v. McKenzie*, 110 Cal. 190; * * * *Sutter Co. v. Tisdale*, 128 Cal. 180.)"

Thus the highest court of California holds that the date of giving notice of intention to move for new trial is *not jurisdictional*. That holding binds the federal courts.

ANSWER TO POINT 2:

There is no merit in this proposition. John S. Bell himself began the case against Staacke and the estate of Thomas Bell, known as case No. 2826, for the purpose of establishing his rights and claims not only as against Staacke as trustee, but as against the estate of Thomas Bell. He did not bring into the controversy the San Francisco Savings Union or the trustees holding the deed of trust (in the nature of a mortgage security), and they were therefore not concluded by the judgment and decree, nor was any attempt made to prejudice their rights.

Nevertheless, a final judgment and decree having resulted in the case thus begun by John S. Bell himself, that judgment is *res judicata* as against him and those claiming under him, and the fact that he did not make somebody else a party in nowise deprived the judgment of its finality or binding effect as against him.

In *Bell v. San Francisco Savings Union et al.*, 153 Cal. 64, Kate M. Bell and James L. Crittenden were appellants and had, in the trial court, undertaken to defeat the claims and security held by the San Francisco Savings Union. The Supreme Court in reviewing that case, on page 74 says:

“It is found, however, that the action of *Bell v. Staacke*, the pendency of which was set up in the pleadings, was still pending at the time of the decision, and that the question of the relations between John S. Bell and his grantees, on the one hand, with Staacke and the estate of Thomas Bell on the other, in respect to the indebtedness of John S. to Thomas Bell, and of the 10,000 acre tract,

are involved in said action, and 'are in course of judicial determination and settlement therein.' The judgment accordingly made no adjudication of the rights of John S. Bell, and Thomas Bell (or their successors), as between each other, leaving the question of those rights to be determined in *Bell v. Staacke*."

ANSWER TO POINT 3:

The quotation from the opinion in *Bell v. San Francisco Savings Union*, 153 Cal. 64 (see 74), conclusively answers Point 3 and shows that there was an express reservation of all questions concerning the mutual rights and relations between John S. Bell and Thomas Bell, or their successors, "as between each other, leaving the question of those rights to be determined in *Bell v. Staacke*."

It shows that there had been no final decree or judgment in *Bell v. Staacke* at the time of the decision in *Bell v. San Francisco Savings Union*, and that the pendency and scope of *Bell v. Staacke* was fully pleaded and recognized in the latter case.

ANSWER TO POINT 4:

Manifestly there is nothing in Point 4. The title to the property in question, subject to the rights of the trustees for San Francisco Savings Union, was in George Staacke. He had conveyed the same as security to trustees for the San Francisco Savings Union and they came into the case of *Bell v. San Francisco Savings Union et al.*, by cross-petition, and set up their rights and the decree was rendered on their cross-petition, ordering the sale of the property, unless the

amount of the indebtedness with interest should be paid.

In the meantime in the older case of *John S. Bell v. Staacke et al.*, Staacke had been decreed and adjudged to hold the title to the property, so far as he was concerned, in trust first, to secure indebtedness from John S. Bell to the estate of Thomas Bell, and second, for the benefit of John S. Bell as to any balance. An order of sale had been issued in that case and the property had been in fact sold, before any attempt was made to sell under the decree in the San Francisco Savings Union case.

Teresa Bell, widow of Thomas Bell, had purchased the property at commissioner's sale and received a deed for the same fully transferring to her all of the rights of John S. Bell and the estate of Thomas Bell, and George Staacke.

Thereupon, clothed as she was with the title and equity in the property, Teresa Bell paid and satisfied the judgment and decree in favor of the San Francisco Savings Union and redeemed the land therefrom.

In any event neither John S. Bell nor his grantees could possibly hold any estate, legal or equitable, in this property by reason of the foregoing facts.

ANSWER TO POINT 5:

There is no merit in Point 5. The Supreme Court of California fully decided the proposition and it is *res adjudicata* in case No. 2826. All of the points and authorities submitted in answer to Point 1 apply also to Point 5.

It will be especially noted that every argument and case relied upon under Point 5, relates to the construction of the provisions of the laws and statutes of California, and that since the Supreme Court has passed upon this precise question at least three times as between these same parties or their privies, the federal court is not only bound under the principles of *res adjudicata*, but would follow this construction of California statutes upon ordinary principles already discussed.

ANSWER TO POINT 6:

There is no merit in Point 6. What has been said in answer to Points 2 and 3 is controlling as to Point 6.

It asks this court to review and reverse the Supreme Court of California and attacks the decision of that court in *Bell v. Staacke*, 141 Cal. 186, 195 *et seq.*

In any case it is impossible to see how John S. Bell or his grantees obtained any right or title in the property by virtue of the attempted logic of Point 6. The argument would be:

“Teresa Bell, by the technical effect of the trust deed securing the San Francisco Savings Union, did not get a title under her purchase in the case of *John S. Bell v. Staacke et al.*; therefore, the grantees of John S. Bell (who at least was concluded by that decree), must have title as against Teresa Bell and those holding under her.”

Why? There is no connection whatever between the argument and any claim of title on the part of the appellant.

ANSWER TO POINT 7:

Point 7 has no application whatever in the chain of title of the appellant, and the appellant is conclusively estopped by the adjudication in the case of John S. Bell v. Staacke *et al.* We have already quoted from the opinion of the Supreme Court in case No. 4424, and shown that the rights of John S. Bell and the estate of Thomas Bell (and their grantees) were expressly left to be determined in the pending action No. 2826.

ANSWER TO POINT 8:

There is no merit in this point. It has no connection whatever with the claim of title on the part of the appellant. It does not relieve appellant from the binding force of the judgment and decree in action No. 2826.

In any event the San Francisco Savings Union and its trustees have had their money and if they have not properly reconveyed to Teresa Bell, they are in equity bound to do so.

On page 75 of the brief for appellant, "fatal error" is claimed in regard to confirmation of sale.

If this were true, the District Court was not the place to review such error, and in any case that would not enlarge the title or equity of John S. Bell or of appellant, as his grantee. It is not profitable to chase a rainbow of that sort.

Stipulation as to Facts.

Complaint is made that the stipulation referred to in the findings and judgment of the District Court was not correct and should have been modified by the court.

This related to the evidence of the several judgments and decrees pleaded in the answers and agreed in open court to substantially set forth the true situation with regard to the state of the court records. Whatever the stipulation was, it was made in open court and three attorneys filed affidavits supporting the proposition that the stipulation is correctly stated in the order and decree. Two attorneys filed affidavits denying the correctness of the stipulation. The district judge was present and personally knew the facts. His action with regard to the same is therefore conclusive upon the subject,—supported as it is by his own memory and the clear preponderance of the affidavit-evidence.

Other Assignments of Error.

The vast number of other assignments of error are made in bulk, without any specification showing where the same may be found or any argument or authority respecting the claims made. We submit that they do not merit consideration at the hands of the court.

Conclusion.

The appellant must necessarily stand or fall upon the strength of his own equity and title. If he is not the owner, and entitled to the possession, of any part of the property in question, it is wholly immaterial as to what flaws or defects may exist in the title of the real owners.

The district judge has quite fully stated the facts and issues in his opinion, found on page 291 of the record, to which we refer the court.

The controlling proposition which answers and destroys all of the claims made by the appellant, is, that in an action brought by his grantor, John S. Bell, against George Staacke, and the estate of Thomas Bell, a final judgment and decree was rendered which was affirmed by the Supreme Court of California, and which conclusively established that George Staacke held the legal title to the 10,000 acres in trust, first to pay the indebtedness from John S. Bell to the estate of Thomas Bell. This judgment and decree is *res adjudicata* as against the plaintiff, and the sale of the property thereunder, and the confirmation thereof and the conveyance by the commissioner after failure to redeem, to Teresa Bell, left John S. Bell with nothing to sell and no title either in law or in equity which could be asserted by either John S. Bell or the appellant.

Respectfully submitted,

LEWIS W. ANDREWS,

THOS. O. TOLAND,

ANDREWS, TOLAND & ANDREWS,

Solicitors for Appellee, Union Oil Company of California.